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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,962	04/14/2004	William Vanbrooks Harrison	AB-238U2	5441

23845 7590 12/15/2005

ADVANCED BIONICS CORPORATION
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EXAMINER

LE, HUYEN D

ART UNIT	PAPER NUMBER
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2646

DATE MAILED: 12/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/823,962

Applicant(s)

HARRISON ET AL.

Examiner

HUYEN D. LE

Art Unit

2646

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 8-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-7 is/are rejected.
- 7) ☒ Claim(s) 4 is/are objected to.
- 8) ☒ Claim(s) 8-20 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>07/15/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. This application contains claims 8-20 drawn to an invention nonelected with traverse in Paper No. October 20, 2005. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim Rejections - 35 USC § 112

2. Claim 1 recites the limitation "the microphone" in lines 5-6. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Art Unit: 2646

4. Claims 1-3 and 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zilberman et al. (U.S. patent 5,824,022) in view of Huth (U.S. patent 3,098,127) or de Vries et al. (U.S. patent 4,727,582).

Regarding claim 1, Zilberman teaches an apparatus for use with a Behind The Ear Implantable Cochlear Stimulation system that comprises an ear hook (36) configured to be removably attachable to a Behind The Ear (30, 32) of an Implantable Cochlear Stimulation (ICS) system, and a microphone assembly (38) to be positioned inside or near the ear canal (col. 5, lines 22-24).

Zilberman does not teach a bendable and formable stalk to be attached to the ear hook for directing the microphone to the inside of an ear. However, providing an earhook to be attached to a bendable and formable tube for positioning a transducer in the ear and for connecting a microphone to a behind-the ear device is known in the art.

Huth teaches a bendable and formable tube (8, col. 2, lines 59-60) to be attached to an ear hook (21, figure 3) of a behind-the-ear device (7) and de Vries et al. teaches a stalk (15, col. 5, lines 13-14) to be attached to an earhook (3) of a behind-the ear device.

Therefore, it would have been obvious to one skilled in the art to provide a bendable and formable stalk, as taught by Huth and de Vries, to be attached to the earhook of Zilberman for better positioning the microphone assembly to the ear of the wearer, and providing a better connection between the microphone assembly and the behind-the-ear device.

Regarding claim 2, Zilberman teaches the microphone (38) that is configured to be electrically connected to a speech processor of the ICS system (figure 5).

Regarding claim 3, Huth teaches the microphone that includes the terminals (20) for connecting to the electronic components in the behind-the-ear device (figure 3). Huth does not specifically teach three terminals as claimed. However, it would have been obvious to one skilled in the art to provide additional terminals in the microphone assembly (6) to provide more electrical connections from the microphone assembly to the electronic components in the behind-the-ear device.

Regarding claim 5, as broadly claimed, Huth teaches a filter (14) at the distal end of the microphone assembly (6) for sealing the microphone from the environment.

Regarding claim 6, Huth and de Vries do not specifically teach the stalk or the tube (18 in Huth and 15 in de Vries) that is formed of shrink tubing. However, Huth and de Vries do not restrict to any material for the stalk (col. 2, lines 59-60 in Huth and col. 5, lines 13-14 in de Vries).

Therefore, it would have been obvious to one skilled in the art to provide any material for the stalk of the system of Zilberman in view of Huth or de Vries, for better adjusting and positioning the microphone assembly to the ear of the wearer.

Regarding claim 7, Huth teaches the microphone assembly (6) that includes a sleeve (12, 13, 14) as claimed.

Allowable Subject Matter

5. Claim 4 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Tziviskos et al. (U.S. patent 6,748,094) teaches a connector system for Behind-the-Ear hearing devices.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HUYEN D. LE whose telephone number is (571) 272-7502. The examiner can normally be reached on 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, SINH TRAN can be reached on (571) 272-7564. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



HL
December 10, 2005



HUYEN LE
PRIMARY EXAMINER